IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION. NO. 442 OF 2005

Guljar S/o Saraphat,
R/o Village Bhaunri,
Tehsil Roorkee, District- Haridwar. ……
……..Applicant

Versus

1. State
2. Judicial Magistrate Roorkee
District Haridwar. ….
……..Respondents.

Date:- 18-7-2005

Hon'ble J.C.S. Rawat, J.

Heard the parties counsel and perused the record.

This is an application under section 482 Cr.P.C. for setting aside the order dated 16-4-05 passed in case crime no. 339 of 2003 State Vs. Ishwar Kala and others by which the learned Magistrate has issued N.B.W. and process under section 82 Cr.P.C. against accused Gulzar S/o Saraphat.

The brief facts relating to this case are that on 22-12-2003, an FIR was lodged by the complainant S.I. Jwahar Singh Incharge Police Station- Kotwali Roorkee against Ishwar @ Kallu and one another co-accused Gulzar S/o Nebu R/o Village Bhaunri District Haridwar under section 420 I.P.C. The matter was investigated by the Police and a charge sheet was submitted against Ishwar @ Kallu and Gulzar S/o Nebu was shown as an absconder in the said charge sheet. At a later stage the public prosecutor on 12-4-2005 moved an application that the accused Ishwar @ Kallu has already been sent to jail and other co-accused

Gulzar S/o Saraphat resident of the same village was wanted in the said case and he requested for issue of Non-bailable warrant and process u/s 82/83 Cr.P.C. against the said accused. The learned Magistrate without giving any reason issued Non-bailable warrant and process under section 82/83 CR.P.C. against Gulzar S/o Saraphat. Thereafter, an objection was filed on behalf of applicant Gulzar S/o Saraphat before the court below alleging that the charge sheet has been submitted against Gulzar S/o Nebu and not against Gulzar S/o Saraphat. The learned Magistrate dismissed the application without assigning any reason. Feeling aggrieved by the said order the present petition has been filed.

The learned counsel of the applicant contended that the charge sheet was filed against Gulzar S/o Nebu and the present applicant is Gulzar S/o Saraphat. The learned public prosecutor before the court below has filed an application without verifying the parentage of the applicant on record. The learned counsel contended that without verifying this fact from the Investigating Officer the public prosecutor has filed the application. The learned AGA refuted the contention.

The perusal of charge sheet clearly reveals that the name of the accused has been shown as Gulzar S/o Nebu whereas the application for issue of Non-bailable warrant and process under Section 82/83 Cr.P.C. has been filed in the name of Gulzar S/o Saraphat. The learned public prosecutor has not indicated in the application how he came to know that the accused applicant Gulzar S/o Saraphat has participated in the crime and Gulzar S/o Nebu has not participated in the crime. Before knowing this fact the

public prosecutor should have asked the Investigating Officer to seek permission for further investigation in the matter as to whether Gulzar S/o Saraphat has participated in the crime instead of Gulzar S/o Nebu. After ascertaining this fact the Investigating Officer had an option to file the charge sheet or a report before the court below. If the report of the Investigating Officer would have come that Gulzar S/o Saraphat has participated in the crime the Investigating Officer was at liberty to file charge sheet against the said accused. Thereafter, the learned Magistrate should have issued process against the said accused.

In view of the above discussion the order dated 16.4.05 passed by the Judicial Magistrate, Roorkee in Criminal Case No. 348/03 is set-aside. The application under Section 482 Cr.P.C. is disposed of finally with the above observations.

(J.C.S. Rawat, J.)

Dated 18.07.2005